

1           A     Idaho Broadcast Consortium.

2           Q     And what is that organization, ma'am?

3           A     It's my husband's company.

4           MR. GAMMON: Might I have a moment, Your Honor. I  
5 think I can wind it up. Your Honor, is this a convenient time  
6 for a recess? I know I'm taking too much time here. I think  
7 about 5 or 10 minutes we can discern whether we have one or  
8 two more questions or whether we're done.

9           JUDGE LUTON: All right. Well, we'll recess five  
10 minutes.

11          MR. GAMMON: Thank you.

12          (Whereupon, off the record from 2:35 p.m. to 2:41  
13 p.m.)

14          JUDGE LUTON: Mr. Gammon, are we completed or are we  
15 going to go on to more.

16          MR. GAMMON: Your Honor, I, I am finished with  
17 cross-examination and I turn our conduct of the case back to  
18 Mr. Fitch.

19          JUDGE LUTON: All right. Is it time for redirect?

20          MR. GAMMON: Yes, sir.

21          JUDGE LUTON: I believe it is. All right.

22                       REDIRECT EXAMINATION

23          BY MR. SHUBERT:

24          Q     Mrs. Constant, there was some question about your  
25 engineer, Mr. Klein. Would you tell us how you came to know

1 Mr. Klein?

2 A Well, I've known Elliott for quite a while. I think  
3 I met him at a convention. It's been quite a while ago. And  
4 his -- Elliott and his wife, Catherine, have been friends of  
5 mine for quite a while. I've gone on vacations with them.

6 Q Mr. Gammon asked you a question pertaining to  
7 Petaluma and its relationship to the coverage area. Would you  
8 explain for us your idea of the relationship of Petaluma to  
9 the coverage area?

10 MR. FITCH: Your Honor, if I might for a minute, I  
11 believe, I believe the question was whether Petaluma was  
12 outside the 1 mil. It didn't have anything to do with the  
13 relationship.

14 MR. SHUBERT: Your Honor, if I may, there was a  
15 specific, rather cavalier expression by Mr. Gammon where he  
16 said, I'm sure Mr. Shubert will have you give examples of the  
17 reason that you believe Petaluma was within the coverage area.  
18 I am following up on that, because that was his question. And  
19 I -- we can take it back to the beginning, but there is a  
20 specific statement in question pertaining to that.

21 JUDGE LUTON: All right.

22 MR. SHUBERT: Because I took it down ver -- yes  
23 there was an answer.

24 JUDGE LUTON: Okay. So since Gammon authorized you  
25 to ask this question, you go ahead and ask it.

1 MR. SHUBERT: I took it down verbatim when he did  
2 it, Your Honor. He opened the door.

3 JUDGE LUTON: I never heard an objection, but I  
4 assume there was one. It's overruled. Ask the question,  
5 let's get a response and move.

6 BY MR. SHUBERT:

7 Q Will you tell us your idea of the relationship of  
8 Petaluma to the coverage area?

9 A Well, Petaluma is a very, very small town and  
10 especially when I was growing up it was a very small town. It  
11 still is a small town. Santa Rosa is a very -- is a much  
12 larger town. The, the basic ser-- you know, services,  
13 everything is in Santa Rosa. The whole area -- from Petaluma  
14 you look right at Mount Saint Helena. I've looked at Mount  
15 Saint Helena all my life as a matter of fact. When I was at  
16 Sonoma State I looked at Mount Saint Helena. I've spent my  
17 entire life just about in the area --

18 JUDGE LUTON: -- is this useful testimony?

19 MR. GAMMON: No.

20 WITNESS: It, it's just that the area -- it's a very  
21 small valley --

22 JUDGE LUTON: Ask your question again. I want --  
23 let's get a better, better focus here.

24 MR. SHUBERT: He was -- Mr. Gammon was examining --

25 JUDGE LUTON: What is the question that you're

1 putting to the witness, please?

2 MR. SHUBERT: What is your understanding of the  
3 relationship of Petaluma to the coverage area?

4 JUDGE LUTON: If you have such an understanding. Do  
5 you have such an understanding?

6 WITNESS: I understood it to mean that -- I mean,  
7 Petaluma is, is part of -- that area, Santa Rosa, Petaluma,  
8 Rohnert Park, Penn Grove, Cotati, Calistoga, Saint Helena,  
9 they're all basically -- your -- they're in a very small  
10 valley. It's, it's -- like if you're going the other  
11 direction, you're in Marin, you're looking at -- towards San  
12 Francisco.

13 JUDGE LUTON: Can you relate any of this to the  
14 service area is, is the way the question has been put to you?

15 WITNESS: Petaluma is -- it's -- Petaluma goes  
16 toward Santa Rosa. It goes to that service area.

17 JUDGE LUTON: You mean goes toward it or goes --

18 WITNESS: We listen to the -- Petaluma listens to  
19 their radio stations. Petaluma receives a TV station that's  
20 in Santa Rosa.

21 JUDGE LUTON: Okay. Have you gotten enough for your  
22 purposes?

23 MR. SHUBERT: Yes, Your Honor.

24 JUDGE LUTON: All right. Thank you.

25 BY MR. SHUBERT:

1 Q Did you ever receive a notice from the Calistoga  
2 Performing Arts Association that your membership was canceled?

3 A No.

4 Q You have testified today about employees that you  
5 contemplate will be working at the station?

6 A Yes.

7 Q How many full-time employees are you contemplating?

8 A There will be less than four.

9 Q Are you contemplating other employees than full-time  
10 employees?

11 A Yes.

12 Q And these other em -- what kind of employees will  
13 these other employees be?

14 A The --

15 Q What will their stature be or, or --

16 A Depending on, on the circumstances, there'll  
17 probably be a part-time engineer, be a part-time secretary.  
18 There could be someone to do part-time programming. There --  
19 they would be part-time.

20 Q When you were preparing your application and in  
21 particular preparing the financial materials, did you -- was  
22 contemplation given to part-time employees as well as full-  
23 time employees?

24 A When I did the budget, I, I left a -- I always -- I  
25 put down more than I had actually budgeted for -- specifically

1 for full-time employees so that I would have the money to pay  
2 part-time employees.

3 Q Would part-time employees perform services in some  
4 of the areas that were described in your Direct Case Exhibit  
5 that you were examined about by Mr. Gammon? And I direct your  
6 attention specifically to page 2 of Hearing Exhibit No. 2,  
7 lines 4 through 18?

8 A Yes.

9 Q What is the composition of the membership of the  
10 Daughters of California Pioneers?

11 A The Daughters of the California Pioneers are -- it's  
12 a historical society that is -- its members are related to  
13 people who entered California prior to 1849. It's -- as I  
14 said, it's, it's a historical organization and so they're  
15 active in preserving the history and the civic pride in  
16 historical areas in California. They maintain a very large  
17 library in downtown San Francisco. It's actually right across  
18 the street from the main branch of the San Francisco library.  
19 And they also have meeting rooms there.

20 Q What is your understanding or belief of the status  
21 of members of the Daughters of California Pioneers in the  
22 community?

23 MR. FITCH: Objection, Your Honor. Daug-- what  
24 community?

25 MR. SHUBERT: In, in any community. I'm leading --

1 I'm laying a predicate.

2 WITNESS: Well, in, in any community it's just an  
3 added enhancement of someone's civic pride and especially  
4 pride in the history of California.

5 MR. SHUBERT: Do these people have any influence in  
6 the communities?

7 MR. FITCH: Objection. It's totally hypothetical.  
8 Do these people have any influence in -- communities?

9 MR. SHUBERT: Do you have any --

10 MR. FITCH: I object.

11 MR. SHUBERT: Do you have any knowledge of members  
12 of the California -- Daughters of the California Pioneers  
13 having any influence in Calistoga or anywhere within the  
14 coverage area?

15 WITNESS: Well, definitely they, they've obviously  
16 been people -- are people that have lived in California for  
17 all of their lives. And so they have a tendency to be civic  
18 leaders in areas.

19 MR. SHUBERT: Have you ever met anybody in the  
20 Calistoga area, besides yourself, who is a member of the  
21 Daughter of the California Pioneers.

22 WITNESS: No --

23 MR. FITCH: Objection, Your Honor. It's irrelevant.

24 JUDGE LUTON: Overruled. Answer it anyway.

25 Proceed.

1                   WITNESS: No. I haven't lived in Calistoga very  
2 long and I, you know, I haven't met any fellow members in  
3 Calistoga yet.

4                   BY MR. SHUBERT:

5           Q       In other areas, have they been entrees to your  
6 involvement in the community where you've lived?

7           A       No, they haven't.

8           Q       Your Honor, at this point I'm placing before the  
9 witness copies of Willson's Exhibit No. 4 and Exhibit No. 5.  
10 Prior today -- to today, have you ever seen those documents?

11          A       No.

12          Q       Do you have any idea where those documents came  
13 from?

14          A       These documents?

15          Q       Yes.

16          A       No.

17          Q       Were those documents ever shown to you prior to  
18 today by Mr. Willson or Mr. Willson's attorneys?

19          A       No, they weren't.

20          Q       Do you know who the author of those documents is?

21          A       No.

22          Q       Do you have any actual knowledge of the source of  
23 those documents?

24          A       No. I mean I'm assuming it's the real estate board,  
25 but I, I can't even -- I'm not even sure of that.



1 Q So you -- but for what is before you, you have no  
2 knowledge of those documents whatsoever?

3 A Not of these documents.

4 MR. SHUBERT: Your Honor, I'm going to move once --  
5 or move that these documents be stricken from the record  
6 because they are totally unsupported by anyone who can attest  
7 to their, their efficacy, their originality, their creation,  
8 that the substance that's contained therein is accurate and  
9 correct. We know nothing about them. We don't even have a  
10 notarized statement that they are true copies taken from any  
11 source.

12 MR. FITCH: May I respond?

13 MR. SHUBERT: I don't even know if notice could be  
14 taken of them frankly.

15 JUDGE LUTON: It depends on what you mean by  
16 a document. If you're talking about just a piece of paper that  
17 imparts no information, that's one thing. If you're talking  
18 about a piece of paper that contains information which the  
19 witness has sworn in her testimony is true and correct, that's  
20 quite another.

21 MR. SHUBERT: But as far as sponsoring them, Your  
22 Honor, there's no sponsor. They are totally unsponsored.  
23 Under the Federal Rules of Evidence, a document has to be  
24 sponsored unless it can be taken notice of.

25 JUDGE LUTON: That's where the document constitutes

1 the evidence. Here the witness' testimony constitutes the  
2 evidence.

3 MR. SHUBERT: But the witness testified as to what  
4 she knew. That is in the record. I'm not moving at all to  
5 strike that.

6 JUDGE LUTON: The documents say no more than what  
7 the witness has testified to.

8 MR. SHUBERT: Well, Your Honor --

9 JUDGE LUTON: That's all, that's all we're  
10 interested in.

11 MR. SHUBERT: So they're duplicative of the record,  
12 is that what it is?

13 JUDGE LUTON: They, they may be duplicative. At  
14 worst, that is all. Certainly not inadmissible. Objection is  
15 overruled, or the request for reconsideration is overruled.

16 MR. SHUBERT: May we have a moment, Your Honor?

17 JUDGE LUTON: Yes.

18 BY MR. SHUBERT:

19 Q Mrs. Constant, may I direct your attention to the  
20 deposition transcript page 110. This is your deposition that  
21 is dated as of June 4, 1993. Actually, let me direct your  
22 attention to page 111 and would you be kind enough to review  
23 page 111 and page 112?

24 A Um-hum.

25 Q Now, I asked you at line 8 of page 11, I said, do

1 | you talk with Mr. Constant, and that's your husband, Frederick  
2 | W. Constant, about matters that occur during the day. And  
3 | your answer was what?

4 |       A     Usually.

5 |       Q     And I said, would it be fair to say that you might  
6 | have talked with him about something that you did involving,  
7 | for example, a discussion with Mr. Livermore?

8 |       A     Yes.

9 |       Q     And who is Mr. Livermore?

10 |       A     Put Livermore is -- owns the tower site on Mount  
11 | Saint Helena.

12 |       Q     So is it your -- so you would have talked with -- so  
13 | would you have talked with your husband about discussions that  
14 | you had with Mr. Livermore?

15 |       A     I would have, I would have talked to him about the  
16 | fact that I talked with Put Livermore.

17 |       Q     Might you have related the substance of your  
18 | discussion with Mr. Livermore to him?

19 |       A     I might have.

20 |       Q     There has been a great deal of discussion today  
21 | about your application.

22 |       A     Yes.

23 |       Q     What does your application mean to you?

24 |       A     It means that it is strictly my application. That I  
25 | have executed the application and I plan to build and run the

1 radio station as my own business. My husband and I have  
2 always had very separate --

3 MR. FITCH: Objection, Your Honor. This, this is,  
4 this is way off base. She's talking -- the question was, what  
5 does your application mean to you. Now, she's talking about  
6 her relationship to her husband, vis-a-vis other businesses.  
7 We were very careful not to get into that area and I object to  
8 where this is going.

9 MR. SHUBERT: She's responding to the question, Your  
10 Honor. He's objecting to her answer to a question.

11 JUDGE LUTON: The question itself is ambiguous.  
12 What does your application mean to you suggests a certain  
13 answer. And what does your application, with the emphasis on  
14 your, suggests another response to the question. It's  
15 ambiguous.

16 MR. SHUBERT: Shall I try to restructure it, Your  
17 Honor?

18 JUDGE LUTON: Would you please?

19 BY MR. SHUBERT:

20 Q Does your application mean FCC Form 301?

21 A Yes.

22 Q When someone asks you a question about your  
23 application, are you thinking of FCC Form 301?

24 A I'm thinking about the application with a capital A,  
25 yes.

1 Q You have discussed with your -- sorry. Have you  
2 discussed with your husband matters pertaining to -- relating  
3 to you activities involving the application?

4 A With matters relating to the application? Yes I  
5 have.

6 Q Have you talked with your husband about the  
7 application, capital A application?

8 A No, I haven't talked to him about that, that  
9 application.

10 Q Directing your attention now, from a thought process  
11 standpoint, to the questions that were posed to you concerning  
12 KFTY and the studio location.

13 A Um-hum. Yes.

14 Q Did there come a time when you talked with a  
15 representative of KFTY?

16 A Yes.

17 Q About your application?

18 A Yes.

19 Q And to whom did you speak?

20 A I talked to Al Huber.

21 Q And did Mr. Huber suggest anything to you about a  
22 studio location?

23 A He said he'd be glad to have me at his -- use of his  
24 studio.

25 Q Is that what prompted your response about the

1 Channel 50 studio pertaining to -- when the question was asked  
2 by Mr. --

3 MR. FITCH: I'm going to object, Your Honor. That's  
4 a leading question.

5 JUDGE LUTON: Yes, it is.

6 MR. SHUBERT: What prompted your response to Mr.  
7 Fitch's question about the main studio?

8 MR. FITCH: The same objection.

9 MR. SHUBERT: And its basis?

10 JUDGE LUTON: That's not leading. That's not  
11 leading, no.

12 MR. FITCH: It is in the context. The answer's been  
13 suggested.

14 JUDGE LUTON: Overruled. You can answer the  
15 question. What prompted your response.

16 WITNESS: Okay. All right. Thank you. Okay. In  
17 addition to having -- studios in Calistoga, when I talked to  
18 Mr. Huber, he was very enthusiastic about meeting me and about  
19 my application and he offered the use of his studio. And I --  
20 that is what prompted me to answer it the way I did.

21 MR. SHUBERT: I have no further questions, Your  
22 Honor.

23 JUDGE LUTON: Recross?

24 MR. FITCH: No, sir, Your Honor.

25 JUDGE LUTON: All right. Thank you, Ms. Constant.

1 WITNESS: Thank you.

2 JUDGE LUTON: That then completes Moonbeam's direct  
3 case?

4 MR. SHUBERT: That's correct, Your Honor.

5 JUDGE LUTON: All right. We're ready then for the  
6 direct case of Mr. Gary E. Willson. Do you want to start this  
7 case this evening or this afternoon or do this tomorrow?

8 MR. FITCH: I'd prefer start tomorrow.

9 JUDGE LUTON: Is it likely that we'll finish  
10 tomorrow if we do that? Because if not I'd just assume go on  
11 to assure that we finish tomorrow.

12 MR. SHUBERT: I would think we would finish  
13 tomorrow, Your Honor, yes.

14 JUDGE LUTON: All right. Then we will quit for  
15 today and we'll be in recess until 9:30 tomorrow morning.

16 (Whereupon, at 3:05 p.m., the proceeding was adjourned.)  
17  
18  
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24  
25

**CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER**

APPLICATIONS OF MOONBEAM, INC. AND GARY E. WILLSON

**Name**

MM DOCKET NO. 93-42

**Docket No.**

WASHINGTON, D.C.

**Place**

JULY 21, 1993

**Date**

We, the undersigned, do hereby certify that the foregoing pages, numbers 7 through 170, inclusive, are the true, accurate and complete transcript prepared from the reporting by MARYKAE FLEISHMAN in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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